IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Income Tax Appeal NO. 716 of 2000

The Commissioner of Income-tax .... Appellant.

vs.

M/s. Modern Paper Convertors . .. . Respondents

E. P. Chopra for Appellant
None for Respondents.

CORAM: **S. RADHAKRISHNAN**
AND
A. S. AGUIAR JJ.

Date: 13/6/2005

P,C,

1. Heard learned counsel for the Appellant and the Respondents.

2. By this appeal the appellant is seeking to raise the following question of law:

"Whether on the facts and circumstances of the

case, the Tribunal was justified in law in deleting the addition of Rs.3,48,852/- made by the AO, without considering the provision of s. 43B of the I. T. Act 1961?"

3. We have perused the Order dated 10th October 2000 passed by the Income Tax Appellate Tribunal, declining to refer the above question for reference. The Tribunal has rightly observed that the refund sought unconditionally and the liability of the assessee did not cease finally once for all, since the refund was subject to the further orders by the CEGAT in the appeal and no benefit had accrued to the assessee during the year ending 31.3.87 under section 41(1). Hence the Tribunal had agreed with the CIT(A) and held that refund cannot be taxed under section 41(1). Under the aforesaid facts and circumstances we find no substantial question of law involved, hence appeal is dismissed.

S. RADHAKRISHNAN J.

A. S. AGUIAR J.